

Statement of

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Co-Director**

before the

Senate Committee on Commerce, Science and Transportation

on

Mergers in the Telecommunications Industry

November 8, 1999

Consumers Union is concerned that an avalanche of mergers in the telecommunications and cable industries is threatening to undermine the development of broad-based competition for local telephone, long distance, television and high-speed broadband Internet services. The Clinton Administration -- including its antitrust and regulatory enforcers -- and the Congress appear frozen in place as today's mergers are justified on the basis of yesterday's mergers, and then used to justify even further consolidation in the future. This merger-mania is already so out of hand that the most popular services most consumers want and need may be available from only one or two players in the market.

The proposed merger between the second and third largest long distance companies, MCI WorldCom and Sprint, illustrate this pattern. In defending its proposed merger MCI WorldCom-Sprint argue that:

...the Bell operating companies have consolidated their local operations through a series of mergers and are moving toward becoming full-service providers of voice, wireless and data services. AT&T, meanwhile, will dominate the provision of broadband services over cable while operating its own nationwide wireless network. MCI WorldCom's merger with Sprint would offer consumers a strong and effective alternative—especially in local markets, where neither company can compete as effectively alone against entrenched monopolies.”

In other words, MCI WorldCom-Sprint claim that consumers have nothing to fear from a merger that dramatically concentrates control of the residential long distance market (in apparent violation of the Justice Department's merger guidelines) between AT&T (58% market share) and MCI-

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John Sidgmore, “More Choices for Telecom Consumers,” letter to editor, *Washington Post*, October 20, 1999.

Sprint (24% combined market share), and consolidates substantial Internet backbone capacity, because the merger will improve chances for these combined companies to compete in the local telephone and broadband Internet markets. Will this competition materialize? Here is an example of what the merging companies said about the likelihood of anyone being able to compete against the consolidated Bell companies:

The pending mergers of Bell Atlantic and GTE, and SBC and Ameritech, are over the line and must be blocked. The mergers would create two mega Bells owning and controlling two-thirds of the local telephone access lines in this country. The situation is now critical and Federal policymakers must stop the local telephone industry from transforming itself into basically a Bell West and a Bell East monopoly.

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The conduct of these companies in the two-and-a-half years since the Telecom Act became law has been to fight competition in both local central office and the courts, which causes us to believe that the purpose of these mergers is to fortify against competition and not to embrace it. The result is that local telephone consumers on an even wider scale will continue to be denied the benefits of choice, price, products, quality and service.

While we agree with Mr. Esrey's assessment of these Bell mergers, and have raised similar concerns about AT&T's even more enormous consolidation of cable companies serving almost 60 percent of cable consumers, it is hard to understand how a merger of MCI WorldCom with Sprint will undo the harm caused by the mergers that have preceded it. The logic appears to be two wrongs – Bell

Trends in Telephone Service, Federal Communications Commission, September 1999, p. 11-11.

Statement of William T. Esrey, CEO Sprint, before the Antitrust, Business Rights, and Competition Subcommittee of the U.S. Senate Committee on the Judiciary, September 15, 1998.

Testimony of Gene Kimmelman on behalf of Consumers Union, before the Antitrust, Business Rights, and Competition Subcommittee of the U.S. Senate Committee on the Judiciary, September 15, 1998.

Comments of Consumers Union, Consumer Federation of America, and Media Access Project Before the Federal Communications Commission In the Matter of *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal Ownership Limits*, MM Docket No. 92-264 and in the Matter of *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Review of the Commission's Cable Attribution Rules*, CS Docket No. 98-82, August 17, 1999.

mergers and AT&T/cable mergers -- justify a third wrong!

Just consider where this wave of consolidation leaves American consumers. At the time Congress passed the 1996 Telecommunications Act, there were eight large local telephone monopolies (seven Bell companies and GTE); three large long distance companies and a handful of small-but-growing competitors; a comparable number of large cable monopolies; four satellite ventures, and electric companies and independent wireless firms were beginning to show interest in expanding more broadly into telecommunications. With markets and technology converging, the Telecommunications Act's goal of promoting broad-based competition could have yielded industry combinations (e.g., local phone/long distance/satellite, cable/long distance) that would have offered consumers a dozen national firms, with as many as half of them attempting to offer a full package of telecom and television services in each local market.

Instead, merger-mania is shrinking the competitive field: SBC and Bell Atlantic have each gobbled up two other regional companies to control about two-thirds of local phone lines, and are partnering with mid-size long distance companies and one of the two remaining satellite firms. AT&T purchased TCI and is in the process of merging with MediaOne (which has a substantial stake in Time Warner's cable systems,) giving AT&T an ownership stake in cable wires reaching about 60 percent of consumers, plus arrangements to provide local telephone services through other cable companies. Once this degree of horizontal power is established in these entrenched monopoly markets, it becomes more difficult for the few remaining players to challenge the dominant local phone and cable players,

Public Law 104-104

Testimony of Gene Kimmelman op. cit.

Comments of Consumers Union, op. cit.

increasing incentives for further consolidation and partnership.

And even these two giant consolidated groups are not well positioned to take each other on in most local markets with a full package of services. For example, AT&T's cable empire has not wired businesses, but can offer consumers a high-speed TV-quality Internet service that local phone companies cannot technically compete against. Unless the price of satellite TV hookups and equipment keep falling and local broadcast channels become readily available from satellite TV providers, the Bell companies will not be able to compete against AT&T and other cable companies. As a result, two giants may not be enough to ensure consumer choice for local phone, cable or TV-quality high-speed Internet services. And the "silent majority" of consumers who are modest users of these services are likely to find themselves on the wrong side of a "digital divide" with rising monthly bills.

Of course the consolidating companies have proposed a host of promises designed to alleviate antitrust and competitive concerns about their mergers. SBC and Bell Atlantic promise to invade other territories, AT&T promises to make its cable systems into local telephone competitors, and now MCI WorldCom-Sprint promises to take a hodge-podge of wireless licenses (MMDS which has significant capacity and line-of-sight limitations) added to limited local wireline infrastructure and become "a third" full service provider into the home. Will these promises be kept? Unfortunately, there is no way of knowing, and probably no way of mandating competitive behaviors that would be sustainable in unknown, future market

David Lieberman, "On the Wrong Side of The Wires," *USA Today*, October 11, 1999.

Cooper, Mark and Gene Kimmelman, *The Digital Divide Confronts the Telecommunications Act of 1996: Economic Reality vs. Public Policy*, Consumer Federation of America and Consumers Union, February 1999.

Lieberman, op. cit.

conditions.

For example, recent efforts by the FCC to “require” pro-competitive behavior have proven woefully inadequate. Detailed performance requirements in the Bell Atlantic/Nynex merger, designed to jump-start local telephone competition, have not been achieved and no enforcement actions have been taken to mandate compliance. As a result, it is hard to believe that the Commission’s “threat” of penalties which could be imposed on SBC for failure to compete in new markets will effectively promote competitive behavior.

So the tradeoff is simple: allow enormous within-sector consolidation of local telephone companies, then cable companies, and then long distance companies, in the hope that they will then cross sectors and challenge each other for a full package of telecom, Internet and television services.

The dangers of allowing entrenched monopolies (local phone and cable) to expand their core markets, or actual competitors (MCI WorldCom and Sprint) to merge are obvious. With cable rates continuing to rise about three-times faster than inflation (23 percent rate increases since passage of the Telecom Act) and local phone rates restrained only by regulation, the fact that little competition is emerging casts significant doubt about recent consolidation in these markets. And long distance competition is not nearly as robust as advertisements for new calling plans would lead you to believe.

A careful analysis of consumers’ long distance bills reveals that since passage of the Act, the majority of consumers are paying a net increase of about \$2 billion a year on their long distance bills. This results from new monthly fees and line-item charges (e.g., federal access, universal service, monthly

Bureau of Labor Statistic cable and “all items” consumer price indexes

minimum charges, monthly service charge) added to the lower per-minute rates. These net price hikes are most alarming because they come during a period when the Federal Communications Commission (FCC) reduced the cost of connecting long distance calls by more than \$4 billion a year. Apparently, even as costs decline and usage increases, the long distance companies do not feel competitive pressure to pass along savings to a large segment of the consumer market:

How did the telecom companies maintain their profit margins? The secret is that many consumers are paying monthly fees of about \$4.95 in return for the lowest rates. AT&T officials on Monday said revenue per minute has actually increased in part because of these monthly fees. Also, people are talking more because they think their long-distance costs are lower.

One other significant but little noticed factor is that the long-distance companies are now paying less to the regional Bell operating companies to originate and terminate calls.

With inadequate competitive pressure in today's market to hold down long distance prices for the majority of consumers who are modest users of long distance services, it is difficult to understand how a merger of the number two and number three companies will benefit consumers. Speculation that some day, the few remaining Bell companies will open their local networks to competition, in compliance with the 1996 Act, and offer long distance service nationwide, is not enough to justify reduced competition for today's long distance consumers.

CONCLUSION

It is time for policymakers to put an end to the telecommunications and cable consolidation that

Comments of Consumer Federation of America, Consumers Union, and The Texas Office of Public Utility Counsel, Before the Federal Communications Commission, In the Matter of *Low-Volume Long-Distance Users*, CC Docket No. 99-249, September 22, 1999.

Rebecca Blumenstein, "MCI's Revenue, Operating Profit Surges," *Wall Street Journal*, October 29, 1999.

is threatening the growth of broad-based competition. We offer excerpts from a recent “Essay” by William Safire as a wake-up call to reverse course on telecommunications policy:

Why are we going from four giants in telecommunications down to two? Because, the voice with the corporate-government smile tells us, that will *help* competition. Now each giant will be able to hedge its bets in cable, phone line and wireless, not knowing which form will win out. The merger-manic mantra: In conglomeration there is strength.

That’s what they said a long generation ago when business empire-builders boosted their egos by boosting their stock to buy the earnings of unrelated companies. A good manager could manage anything, they said, achieving vast economies of scale. As stockholders discovered to their loss, that turned out to be baloney.

Ah, but now, say the biggest-is-best philosophers, we’re merging within the field we know best. And if we don’t combine quickly, the Europeans and Asians will, stealing world business domination from us. The urgency of “globalization,” say today’s merger-maniacs, destroys all notions of diverse competition, and only the huge, heavily capitalized multinational can survive.

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Here are two startling, counterintuitive thoughts: *The fewer companies there are to compete, the less competition there is. And as competition shrinks, prices go up and service declines for the consumer.* (Say these reactionary words at the annual World Economic Forum in Davos, and listen to the global wheeler-dealers guffaw.)

Who is supposed to protect business and the consumer from the power of trusts? Republican Teddy Roosevelt believed it to be the Federal Government, but the antitrust division of Janet Reno’s Justice Department is so transfixed by its cases against Microsoft and overseas vitamin companies that it has little time to enforce antitrust law in dozens of other combinations that restrain free trade.

Our other great protector of the public interest in diverse sources is supposed to be the F.C.C. When MCI merged with Worldcom last year, the chairman appointed by President Clinton, William Kennard, took no action but direly warned that the industry was “just a merger away from undue concentration.” Now that is happening.

Why will the F.C.C. after asking for some minor divestiture, ultimately welcome a two-giant waltz? For the same reason that the broadcasters’ lobby was able to steal tens of billions in the public’s bandwidth assets over the past few years: Mr. Clinton wants no part of a communication consumer’s “bill of rights.”

Candidates Bradley, Bush and Gore look shyly away lest trust-luster contributions dry up...